

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CR No. 8338 of 2019
Date of decision : 6.1.2020**

Nisha and others

.....Petitioners

Vs.

Kaushalya and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Naveen S. Bhardwaj, Advocate, for the petitioners

Rajbir Sehrawat, J. (Oral)

This petition has been filed under Article 227 of the Constitution of India seeking issuance of directions to the trial Court, for adjudication and determination of the application under Order 39 Rule 1 and 2 CPC, filed in Civil Suit No. 939 of 2018 dated 28.11.2018 titled as Nisha and others v. Kaushalya and others.

Referring to the pleadings made in the petition, learned counsel for the petitioners has submitted that the suit was filed by the petitioners along with the application for stay under Order 39 Rule 1 & 2 CPC. Notice was issued in the suit as well as in the application on 28.11.2018. Thereafter, the proceedings of the suit were fixed for 3.12.2018. The defendants/respondents had appeared before the trial Court and the case was fixed for 17.12.2018 for filing reply to the suit as well as to the stay application. However, thereafter, the defendants/respondents have been forcing the Court to adjourn the proceedings time and again by moving applications one after the another. As a result, till today, even the application for stay has not been decided by the trial Court.

On the other hand, the defendants/respondents have leased out the

land to the third party and the said third party is in the process of installing a petrol pump on the land in dispute. Therefore, due to non-decision of the application of the petitioners, seeking stay in the matter, the defendants/respondents are changing the nature of the suit property. Hence, it is submitted that the trial Court be directed to take a decision on the stay application.

Since the present petition can be disposed of at this stage itself, therefore, in view of the nature of the order being passed herein, issuance of notice to the other side is not deemed necessary at this stage.

Having heard learned counsel for the petitioners and having perused the case file, this Court is of the opinion that since the dispute relates to the property, which is claimed to be a joint property before the impugned partition and the defendants/respondents are, statedly, changing the nature of the suit property, therefore, it would be in the fitness of the things if the trial Court takes a decision on the application moved by the petitioners for seeking interim order. Accordingly, it would be appropriate to issue direction to the trial Court to decide the application for stay; moved by the petitioners, within a time bound frame..

Accordingly, the present petition is disposed of with a direction to the trial Court to take a final decision on the stay application moved by the petitioners under Order 39 Rule 1 and 2 CPC, within a period of one month from the date next fixed before the trial Court.

(RAJBIR SEHRAWAT)
JUDGE

6.1.2020

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No